

June 28, 2012

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Via Hand Delivery

Mr. Anthony Herman, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Matter Under Review 6572

Dear Mr. Herman:

This letter responds to the complaint filed against Danny Tarkanian for Congress (FEC ID Number C00465963) ("TFC") and Judith Flynn, in her official capacity as treasurer of Danny Tarkanian for Congress in the above-captioned matter. Because most of the allegations involve minor reporting issues that have been rectified, or other issues that have been remedied, the Commission should find no reason to believe and dismiss the complaint.

EXECUTIVE SUMMARY

The complaint makes four separate allegations, none of which should result in the Commission finding reason to believe that TFC violated the Federal Election Campaign Act ("FECA"):

- 1.) TFC accepted contributions from limited liability companies without properly designating the contributions to the members, which could have resulted in excessive contributions;
- 2.) TFC may have accepted excessive contributions from a member of a particular limited liability company;
- 3.) TFC did not properly report outstanding debts; and
- 4.) TFC accepted corporate contributions.

Minor Reporting Errors: The first three issues are nothing more than minor reporting errors, due to oversight by new campaign staff, which have

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Anthony Herman, Esq.

June 28, 2012

Page 2

been promptly remedied through subsequent amendments to TFC's quarterly reports. None of these reporting errors resulted in excessive contributions from members of the limited liability companies or otherwise prohibited contributions.

Refunds of Corporate Contributions: The complaint alleged that Haig's Quality Printing made a prohibited corporate contribution. While there was no indicia on the check from Haig's that it was incorporated, TFC has since investigate the matter and refunded the contribution within 30 days as required by 11 C.F.R. § 103.3(b)(2). Accordingly, TFC acted in full accordance with the requirements of the FECA and the Commission's regulations.

The complaint also alleged that contributions from several other business entities could have been impermissible corporate contributions. Upon review, none of these entities was a corporation. Accordingly, there was no violation of 2 U.S.C. §441b.

TFC notes that it had previously identified several attempted corporate contributions, which it had refunded in general accordance with the provisions of 11 C.F.R. §103.3(b)(1). These contributions are not the subject of this complaint, but TFC calls them to the Commission's attention in order to eliminate any questions regarding TFC's proper handling of them.

As a result of the allegations in the complaint, TFC thoroughly reviewed its contributions to make certain it had not inadvertently accepted other corporate contributions. TFC determined it had inadvertently accepted a few other corporate contributions, which it promptly refunded. TFC has provided additional training to its treasurer and imposed new policies and procedures to avoid such processing errors in the future.

Dismissal is Appropriate: At no time were corporate funds solicited, intentionally deposited into the campaign account, or spent. Moreover, TFC has implemented new policies, procedures, and training to help prevent the acceptance of corporate contributions. Accordingly, the Commission should find no reason to believe that TFC or Ms. Flynn violated the FECA and dismiss the complaint.

Anthony Herman, Esq.
June 28, 2012
Page 3

DISCUSSION

I. Most of the Allegations Involve Relatively Minor Reporting Errors, which have been Resolved, and which Involve no Impermissible Contributions.

Three of the issues raised in the complaint are minor reporting matters. They involved either a new treasurer familiarizing herself with FEC reporting, or a technical issue with the reporting software. (See Declaration of Danny Tarkanian ¶¶ 8-9 ("Tarkanian Dec'l") attached hereto as Exhibit 1; Declaration of Judith Flynn ¶ 16 ("Flynn Dec'l") attached hereto as Exhibit 2.) All have been rectified through an amended report. (Flynn Dec'l ¶ 14.)

A. Limited liability company contributions without attributions have been corrected and no excessive contributions were made.

The complaint states that TFC reported 14 contributions from limited liability companies without the required attribution to the members on its April 2012 Quarterly Report¹. Two of these limited liability companies had corresponding memo entries disclosing the name of the member: High-Tech LLC (page 42) and Agilitech, IT, LLC (page 5). Of the 12 remaining limited liability companies, TFC determined that although it had entered the member attributions into its filing software, the software did not generate the proper attributions for the other twelve limited liability companies. (Flynn Dec'l ¶¶ 15-16.)

TFC filed an amended April Quarterly report on May 31, 2012. The report clearly shows the members of the limited liability companies and their pro rata share of the contributions. None of these individuals made contributions in excess of the \$2,500 contribution limit. Exhibit 1 to the Flynn Declaration contains a summary of the limited liability contributions and the attributions to the individual members.

¹ The April Quarterly report was timely filed on April 15, 2012. In order to make minor corrections to the report, TFC filed an amended report the next day, April 16, 2012. (Flynn Dec'l ¶ 4.) All references to the April Quarterly report are to the amended report filed on April 16, 2012.

Anthony Herman, Esq.
June 28, 2012
Page 4

When it initially prepared the report, TFC properly ascertained that each of the limited liability companies was taxed as a partnership and determined who the individual members were for attribution purposes. (Flynn Dec'l ¶15.) As such, it fully complied with the record-keeping requirements of 11 C.F.R. § 110.1(g)(5).

B. There were no excessive contributions from Mr. Zinkin due to similar names of two contributors.

The complaint alleges that DeWane Zinkin, Jr. made excessive contributions through personal contributions of \$2,500 and as a member of a Zinkin Entertainment LLC, which made contributions of \$2,500 to both the primary and general election. The initial April Quarterly report identified DeWane Zinkin, Jr. incorrectly as the President/CEO of Zinkin Entertainment LLC on page 91. (Flynn Dec'l ¶ 18.) The amended report correctly identifies him as an attorney on page 96; he is not a member of Zinkin Entertainment LLC. (*Id.*)

The amended April Quarterly report correctly identifies Dewane Zinkin as the sole member of Zinken Entertainment LLC. (*Id.*) Dewane Zinkin is the son of DeWane Zinkin, Jr. (*Id.*) Although their businesses are located at the same address, they are two different people with two different businesses. (*Id.*)

C. The outstanding debts were misreported due to a change in accountants and have been correctly reported on the amended report.

On the Year-End 2011 report, TFC reported debts outstanding to Mr. Tarkanian and identified those debts as having been forgiven. (Flynn Dec'l ¶ 6.) The notation that the debts had been forgiven was not correct. (*Id.* ¶ 7.) However, TFC's new treasurer responsible for the April Quarterly report did not know that the year-end report contained this error and did not report any outstanding debts on the April Quarterly report. (*Id.*)

TFC changed accountants in March, 2012 because Mr. Tarkanian determined that his accountant for the primary was also providing accounting services to his opponent. (Tarkanian Dec'l ¶¶ 5-8.) This change in accountants resulted

in some confusion on the part of the new accountant, who inadvertently did not report the debts on the initial April Quarterly report. (Tarkanian Dec'l ¶ 9; Flynn Dec'l ¶ 6.) Once the concerns about Mr. Tarkanian's debt came to light, the treasurer amended the report to properly include the debts still outstanding. (Flynn Dec'l ¶ 8).

II. Corporate Contributions Have Been Identified and Returned.

The complaint alleges that TFC accepted impermissible corporate contributions from Haig's Quality Printing and questions whether other business entities also made impermissible corporate contributions. These contributions were sent in by contributors even though Mr. Tarkanian is careful to notify prospective donors that corporate contributions are not permissible (Tarkanian Dec'l ¶ 10) and the contribution form he uses includes a notice that corporate contributions may not be accepted (Tarkanian Dec'l ¶ 11 and Exhibit A.)

A. The alleged corporate contributions identified in the complaint were either not corporate contributions or were properly refunded.

Haig's Quality Printing: The complaint focuses on a contribution received on March 30 (the day before the close of the reporting period) from Haig's Quality Printing. The name of the company on the check did not indicate that it was a corporate entity. Thus, as a new treasurer, Ms. Flynn did not have a "genuine question" about the legality of the contribution and deposited the check. (Flynn Dec'l ¶ 11.) See 11 C.F.R. § 103.3(b)(1). After receiving the complaint in May, TFC investigated and determined that Haig's is a corporate entity. (*Id.*) TFC issued a refund on May 5, 2012 (which is reported on page 47 of the Pre-Primary report). This was within 30 days of the date TFC learned that the contribution may have been impermissible, which is consistent with the requirements of 11 C.F.R. § 103.3(b)(2).

Other Entities in the Complaint: The complaint also alleges that B.I. Porter Commercial & Residential Properties, Mason Contractors Association of America, and Nostrebor Music may also be corporate contributions. TFC mistakenly failed to note that the contribution from the Mason Contractors Asso-

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Anthony Herman, Esq.
June 28, 2012
Page 6

ciation was from that organization's political action committee. The amended report correctly identifies the PAC as the contributor on page 102. As such, this contribution was completely permissible. The check from B.I. Porter specifically included on the memo line that it was "Not a Corporation," and Ms. Flynn contacted the company to confirm this. (Flynn Dec'l ¶ 12.) Ms. Flynn contacted Nostrebor Music, which informed her that it is a sole proprietorship. (*Id.*) On the Amended April Quarterly report, Nostrebor is described as a sole proprietorship. As such, each of these contributions was permissible because it did not involve a corporate contribution.

B. Tarkanian for Congress had already located and returned corporate contributions.

Prior to receiving the complaint, TFC had already refunded contributions it determined to be from impermissible corporate sources. (Flynn Dec'l ¶ 9.) With the lack of staff, these contributions were promptly deposited to comply with the ten-day deposit window, and then reviewed for compliance purposes. (*Id.*)

Contributor	Amount	Date Received	Date Refunded
Primary Care, Inc.	\$500	3/30/12	3/31/12
Rick Schneider Insurance	\$750	2/27/12	3/31/12
Howard L. Ekerling, Inc.	\$100	3/30/12	3/31/12

Two of these contributions were returned within the 30-day period provided for in 11 C.F.R. §103.3(a)(1), and one was a mere three days late. Given the treasurer's transition, and lack of experience, the Commission should determine that this three-day delay on a \$750 contribution is a low enforcement priority and dismiss the complaint.

C. An internal review located a few corporate contributions, which were promptly refunded.

In response to the minor oversights and discrepancies described above, TFC conducted a comprehensive review (Tarkanian Dec'l ¶ 12; Flynn Dec'l ¶ 10)

and located five other possible corporate contributions, which it refunded as shown below:

Contributor	Amount	Date Received	Date Refunded
AM Power Systems	\$100	3/30/12	5/1/12
Cholakian Investments, Inc.	\$100	3/6/12	4/8/12
Attorneys' Investigative Consultants	\$10	4/1/12	5/5/12
The Rogich Communications Group	\$1,000	2/9/12	3/30/12
The Rogich Communications Group	\$1,000	3/30/12	3/30/12

(Flynn Dec'l ¶13.) These contributions were all refunded within 30 days of the review process (and many in significantly less). (*Id.*) Accordingly, under 11 C.F.R. § 103.3(a)(2), they were timely refunded once the review process was undertaken. Moreover, four of the five did not have any indicia of being corporate entities, and thus did not raise flags in the first place. The fifth was for \$100, which was below the itemization threshold, so it would not have appeared on the report when it was being reviewed. Under the new procedures implemented to screen contributions in accordance with the FECA, this contribution would not even be deposited into the account today. (Tarkanian Dec'l ¶ 14 and Exhibit B.)

III. Tarkanian for Congress has Implemented Remedial Measures to Avoid Similar Issues in the Future.

TFC and Ms. Flynn acknowledge that there were some reporting errors or discrepancies with the April Quarterly 2012 report. When these allegations came to light, TFC undertook a comprehensive review of its accounts and took the necessary steps to refund improper corporate contributions and file amended reports. (Tarkanian Dec'l ¶¶ 12-13 ; Flynn Dec'l ¶¶ 4, 5, 9-13.)

Moreover, TFC has adopted policies and procedures that will strengthen compliance. (Tarkanian Dec'l ¶¶ 14-15; Flynn Dec'l ¶19.) Specifically, TFC has:

- Adopted a checklist of procedures to follow when any contribution is made by a check that contains a business or other organizational

name and not the name of an individual. (Exhibit A to Tarkanian Dec'l.) These procedures include:

- ✓ When processing contributions, holding all checks with such names aside for further review.
 - ✓ Contacting the donor to ask whether the entity is a corporation, partnership, or limited liability company.
 - ✓ Reviewing corporate records (e.g., the Secretary of State's database) when questions remain.
 - ✓ Requesting information about individual members or partners, to the extent it is not provided, to determine proper attribution.
 - ✓ Returning contributions that are impermissible.
- Adopted procedures by which to review draft FEC reports (Exhibit C to Tarkanian Dec'l), including:
 - ✓ Searching the report for all instances where LLC appears and making certain that contributions are properly attributed to the members.
 - ✓ Reviewing the report for any names of donors that are not individuals and confirming that the proper documentation was collected.
 - ✓ Reviewing reports for outstanding debts and comparing those figures to the figures in the general ledger.
 - Trained its treasurer and accountant in these supplemental procedures. (Flynn Dec'l ¶¶ 19, 21.)
 - Retained counsel to assist with compliance obligations. (Tarkanian Dec'l ¶ 16; Flynn Dec'l ¶ 20.)

CONCLUSION

As discussed above, most of the issues raised in the complaint were minor reporting issues that have been remedied through amended reports. These allegations did not involve impermissible contributions. The one corporate contribution identified in the complaint was refunded within 30 days of when

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Anthony Herman, Esq.

June 28, 2012

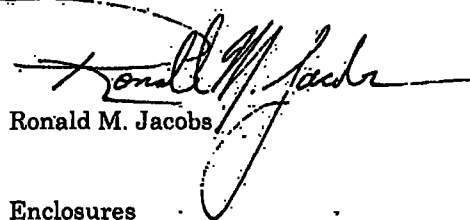
Page 9

the issue was raised, in accordance with the Commission's regulations. As such, this did not involve the acceptance of an impermissible corporate contribution.

TFC had screened its contributions carefully and correctly refunded several corporate contributions that it received within the time period specified in the regulations (or within three days of that period in the case of one contribution). Finally, after a careful internal review, TFC located five corporate contributions and refunded all of those within 30 days of discovery. Moreover, TFC has taken steps to ensure that it will not inadvertently accept corporate contributions in the future.

For all of these reasons, the Commission should find no reason to believe that TFC or Ms. Flynn (in her official capacity as treasurer of TFC) violated the FECA and dismiss this Matter Under Review.

Respectfully submitted,



Ronald M. Jacobs

Enclosures